

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1586

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee, Regulated Industries Committee, and Senator Constantine

SUBJECT: Swimming Pool and Spa Contracting

DATE: April 20, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable</u>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable/CS</u>
3.	<u>Kruse</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute 1586 amends the law requiring registration of specialty contractors to permit a person to perform specialty contracting services for the construction, remodeling, repair, or improvement of a swimming pool or spa without having to obtain a local professional license. The committee substitute requires that the specialty contractor be supervised by a certified or registered commercial pool/spa contractor, residential pool/spa contractor, or swimming pool/spa servicing contractor acting within the scope of the supervising contractor's license.

The committee substitute requires a local authority to allow registration of a person wishing to perform specialty contracting as an alternative when the local authority does not require a local specialty contractor license or a local certificate of competency related to swimming pool/spa services. The local authority may charge a fee for the registration which may not exceed \$150. The local authority may not require proof of competency for the local registration, but it may require proof of workers' compensation coverage or a valid exemption from that coverage. The committee substitute further provides that local registration shall require the local registrant to contract with a certified or registered commercial pool/spa contractor, residential pool/spa contractor, or swimming pool/spa servicing contractor.

This committee substitute amends section 489.117, Florida Statutes.

II. Present Situation:

Construction Contracting and Specialty Contracting

Section 489.107, F.S., establishes the Construction Industry Licensing Board within the Department of Business and Professional Regulation. The board enforces the provisions of part I of ch. 489, F.S., relating to construction contracting.

Section 489.113(1), F.S., requires any person who desires to engage in contracting on a statewide basis to demonstrate competency by passing an examination to be certified by the board. Unless an applicant is certified, s. 489.117, F.S., regarding registration of specialty contractors, requires any person engaged in the business of contracting in the state to be registered in the proper classification. Each certified contractor specialty requires a certain level of education and experience, and an applicant must also pass an examination administered by the board.

Section 489.113(2), F.S., prohibits any person from engaging in the business of contracting in this state unless he or she is certified or registered. However, this provision permits a person who is not certified or registered to perform construction work under the supervision of a person who is certified or registered, if the work is within the scope of the supervisor's license and if the person being supervised is not engaged in construction work which would require a license as a contractor under any of the categories listed in s. 489.105(3)(d)-(o), F.S.

Division II Contractors

Section 489.105(3)(d)-(o), F.S., specifies categories of licensure to include general, building, residential, sheet metal, roofing, air-conditioning, mechanical, swimming pool, plumbing, underground utility and excavation, and solar contractors. These contractors are described as Division II contractors.¹

As provided in s. 489.105(3)(j)-(l), F.S., swimming pool contracting categories include commercial pool/spa contractor, residential pool/spa contractor, and swimming pool/spa servicing contractor (hereafter collectively referred to as swimming pool/spa contractors).

Local Licensure

Counties and municipalities may require local professional or occupational licenses for certain specialty contracting services that are not specifically defined in s. 489.105(3), F.S., and, therefore, do not require board certification or registration.

Section 489.117(4)(e), F.S., provides an exception to these local professional licenses. It provides that any person who is not required to obtain a registration or certification under s. 489.105(3)(d)-(o), F.S., may perform specialty contracting services for the construction, remodeling, repair, or improvement of a single-family residence without obtaining a local professional license, if such person is under the supervision of a certified or registered general, building, or residential contractor. The term "supervision" does not require the existence of a

¹ Section 489.105(3), F.S., describes contractors, as defined in s. 489.105(3)(d)-(q), F.S., as Division II contractors.

direct contract between the certified or registered contractor and the person performing the specialty contracting services. This exception does not apply to swimming pool/spa construction.

Workers' Compensation

Section 440.03, F.S., requires every employer and employee, as defined in s. 440.02, F.S., to abide by the workers' compensation provisions of ch. 440, F.S. Section 440.02(15)(b)2., F.S., permits a corporation engaged in the construction industry to elect to exempt no more than three of its officers from the workers' compensation requirement. Under ch. 2003-422, L.O.F., the term "officer" includes a member owning at least 10 percent of a limited liability company created and approved under ch. 608, F.S.

Section 440.103, F.S., requires every employer, as a condition to applying for and receiving a building permit, to show proof and certify to the permit issuer that it has secured workers' compensation for its employees under ch. 440, F.S. The required proof of compensation must be in the form of any of the following documentation:

- a certificate of coverage issued by the carrier,
- a valid exemption certificate approved by the Department of Financial Services, or
- a copy of the employer's authority to self-insure.

The documentation must be presented each time the employer applies for a building permit, and each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed under s. 627.221, F.S. Under s. 440.10(1)(c), F.S., a contractor must require a subcontractor to provide evidence of workers' compensation insurance or an exemption from that insurance.

III. Effect of Proposed Changes:

This committee substitute provides procedures for a person to perform specialty contracting work on a swimming pool or spa.

The committee substitute amends s. 489.117, F.S., to permit a person who is not required to obtain registration or certification under s. 489.105(3)(a)-(i) or (m)-(o), F.S., to perform specialty contracting services for the construction, remodeling, repair, or improvement of a swimming pool or spa without having to obtain a local professional license. This exception to local licensure would not apply to any person who is required to obtain certification or registration as a swimming pool/spa contractor under s. 489.105(3)(j)-(l), F.S.

A person wishing to perform a specialty contracting service must be supervised by a certified or registered commercial pool/spa contractor, residential pool/spa contractor, or swimming pool/spa servicing contractor (hereafter collectively referred as swimming pool/spa contractor) acting within the scope of the supervising contractor's license.

The committee substitute provides that if a local authority does not require a local specialty contractor license or local certificate of competency for any service provided by a swimming pool/spa contractor, it must allow, as an alternative, local registration of the person contracting

with a supervising contractor to perform a specialty service. The local authority may charge a fee for the registration, but the fee may not exceed \$150. The local authority may not require proof of competency for the local registration, but must require proof of workers' compensation coverage or a valid exemption from that coverage. The committee substitute does not specify the documentation necessary to show proof of workers' compensation coverage.

The committee substitute further provides that local registration must require the local registrant to contract with a swimming pool/spa contractor. The committee substitute does not specify the nature of the contract or require that the supervising contractor be a party to that contract.

The committee substitute takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Local licensing authorities may charge a fee for local registration of no more than \$150.

B. Private Sector Impact:

A swimming pool/spa contractor may be able to perform specialty contracting, under supervision, without having to obtain a local license or certificate of competency.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The committee substitute references a fee of no more than \$150 that a local authority may charge to a person for registration as a specialty contractor if that local authority does not require a local license or certificate of competency. However, the title of the committee substitute does not mention the fee. The Legislature may wish to amend the title of the committee substitute to reference the fee.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
